



# Criminal Appeals: Questions and Answers

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## **1. May a person convicted of a crime in North Carolina challenge that conviction by an appeal?**

In most cases, a criminal defendant has a right to appeal his or her conviction and sentence to the appellate courts of North Carolina.

## **2. When may a criminal defendant appeal a conviction?**

A defendant may give notice of appeal orally in open court or in writing within fourteen days after the judge sentences him or her.

## **3. How much time does it take to appeal a conviction?**

The appeals process can be very lengthy, lasting several months or sometimes years. Time limits for specific steps in the appeals process are included in the following answers.

## **4. How can I make sure that I am notified about an appeal?**

If you are a victim who would like to be kept informed about an appeal, you should notify the District Attorney's Office that prosecuted the trial. Please make sure that the District Attorney's office has your current address and telephone number.

## **5. What is the first step in the appeals process?**

First, a transcript (written record) of the trial must be prepared by a court reporter. In a capital case (the defendant has been convicted of first degree murder and sentenced to death), the court reporter has 120 days to prepare the transcript. In a non-capital case, the court reporter has 60 days to prepare the transcript. Courts may grant extensions of time (often 30 days).

## **6. What is the next step in the appeals process?**

After the transcript has been delivered to the defendant's appellate lawyer, that lawyer has 35 days in a non-capital case and 70 days in a capital case to prepare the Record on Appeal. The Record on Appeal explains possible legal errors that may have kept the defendant from getting a fair trial or sentence. Courts may grant extensions of time (often 30 days).

## **7. Who is involved in preparing the Record on Appeal?**

The defendant's appellate lawyer prepares the Record on Appeal and then serves it on the prosecutor who handled the initial trial. The prosecutor can: (1) agree to the Record; (2) object to parts of the Record; or (3) move to add information to the Record. After receiving the Record, a prosecutor has 21 days to respond in a non-capital case or 35 days in a capital case.

## **8. How long does it take for the Record on Appeal to be settled?**

If the prosecutor and the defendant's lawyer cannot agree on the Record on Appeal, the trial judge must settle the Record within 20 days of a request for settlement. Courts may grant extensions of time (often 30 days).

## **9. Who receives the Record on Appeal?**

Once the Record is settled, it must be filed in the proper appellate court. Printed copies are sent to the Attorney General, who represents the State of North Carolina in appellate court. **Note:** This is usually the first time that the Attorney General's Office becomes involved in a case. If you have questions about an appeal before the Record is filed, contact the local District Attorney's Office.

## **10. What happens after the Record on Appeal is filed?**

When a copy of the Record arrives at the Attorney General's Office (usually within a week of mailing), the Appellate Section receives it and assigns the appeal to an attorney. The State's attorney then contacts the District Attorney and the defendant's appellate lawyer, requests the trial transcript from the District Attorney's Office, and contacts any interested victim(s).

**11. What kind of information can the State's appellate attorney share with victims?**

If you are a victim who has requested notification about an appeal, the State's attorney is responsible for providing you with the following information: the date, time and place of any appellate proceeding; the progress of an appeal; the final outcome of an appeal.

**12. How much time does it take before an appellate court reviews the Record on Appeal?**

After the Clerk of the Appellate Court mails the printed Record to both parties, the defendant has 30 days (60 days in a capital case) to file a brief (a written legal argument) in support of the legal errors raised in the Record. The State's attorney then has 30 days (60 days in a capital case) to file a brief responding to the defendant's brief. Courts may grant extensions of time (often 30 days).

**13. Which court decides an appeal?**

In capital cases, appeals go directly to the Supreme Court of North Carolina and are heard by all seven justices. In non-capital cases, appeals go to the North Carolina Court of Appeals and are heard by a panel of 3 judges (out of a total of 15 judges).

**14. How is an appeal presented to the Court?**

In an oral argument, attorneys present information to the court verbally. No witnesses testify and no evidence is presented. Each side has 30 minutes to present its legal argument, which is strictly limited to the legal errors raised in the Record on Appeal and in the briefs. If oral argument will be held, it is usually scheduled within several months after the State files its brief. Oral argument is almost always held in the Supreme Court, while oral argument is not held in most Court of Appeals cases.

**15. How long does it take for an appeal to be decided by the Court?**

An appellate court may issue its opinion (decision) in as little as a month or as long as a year or more. The average time period is 6 months, but there is no time limit. Length of time does not indicate what kind of decision the court will reach. Opinions are available on the Internet at [www.nccourts.org](http://www.nccourts.org). The Court of Appeals issues opinions on the first and third Tuesday of each month. The Supreme Court issues opinions once each month, usually during the first or second week of the month.

**16. Does the judges' decision have to be unanimous?**

Unlike a jury verdict, an appellate court decision does not have to be unanimous. A majority decides the case. That means that a Court of Appeals case can be decided by 2 out of 3 judges, and a Supreme Court case can be decided by 4 out of 7 justices. Judges or justices who disagree with the majority decision are said to dissent from the opinion.

**17. How does a defendant win an appeal?**

If the appellate court were to find that prejudicial (unfair) error(s) occurred during the trial, the court would set aside or reverse the conviction, vacate the judgment, and remand (send back) the case to the trial court for a new trial. (The District Attorney decides whether or not to prosecute a new trial.) If the appellate court were to find that prejudicial error(s) occurred during sentencing, the court would uphold the conviction but remand the case to trial court for a new sentencing hearing. If the appellate court finds that there was insufficient evidence to support the jury's verdict, the court would reverse the conviction.

**18. How does a defendant lose an appeal?**

If the appellate court did not find any prejudicial error in the trial, sentencing, or jury's verdict, the court would uphold the conviction and sentence and deny the defendant's appeal. If the appellate court finds error but determines that it was not prejudicial (did not unfairly effect the outcome of the case), the court would uphold the conviction and sentence and deny the defendant's appeal.

**19. If an appeal is denied, can a defendant appeal again?**

If a Court of Appeals decision is not unanimous, the losing side has the right to appeal to the Supreme Court. If the case involves a "substantial constitutional question" that has not already been decided by the Supreme Court, the losing side has the right to appeal to the Supreme Court. If there is no dissent and no constitutional question, the losing side may petition the Supreme Court for discretionary review of the case.

**20. What laws protect victims during the appeals process in North Carolina?**

To learn more about victims' legal rights, please see the North Carolina Constitution (Article 1, Section 37) and North Carolina General Statute 15A-830 through 842. (Available on line at [www.ncga.state.nc.us](http://www.ncga.state.nc.us)).

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